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UK Digital Markets Unit – A New Regime for Online Platforms

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On November 27, the UK Government announced the introduction of a new regulatory regime for digital platforms to be overseen by a dedicated Digital Markets Unit from April 2021. This announcement comes following a market study into online platforms and digital advertising that was published by the UK Competition and Markets Authority over the summer. In that report, the CMA concluded that the lack of competition in the market was harming consumers and businesses alike and made the case for a new regulatory regime to address its concerns. With its recent announcement, the UK Government has accepted the CMA's call for intervention and proposed a range of measures to create what it describes as "a healthy environment for tech companies".

Below we summarise the main measures proposed.

New code of conduct to govern platforms with "strategic market status"

The UK Government considers that a code of conduct for platforms funded by online advertising designated as having "strategic market status" would protect competition in digital markets. While the contents of the code have yet to be drawn up, it is anticipated to address anti-competitive behaviour and enhance consumer choice and control. It will also provide clarity on what behaviours will be considered acceptable for companies with designated strategic market status.

The Digital Markets Taskforce, which was established by the UK Government earlier this year, will provide advice on the potential design and implementation of the code and the approach to designating companies that have substantial and enduring market power with strategic market status. It is expected that the Digital Markets Taskforce will issue its report before the end of the year.

A dedicated Digital Markets Unit

The UK Government agrees with the CMA that a dedicated DMU is needed to introduce, maintain and enforce the code of conduct. While the form and function of the DMU will be subject to consultation, the DMU will be established within the CMA from April 2021, to build on the work of the Digital Markets Taskforce and to begin to operationalise the key elements of the regime. Arrangements to enable close cooperation with other regulators are also being considered and the UK Government plans to work with the Digital Regulation Cooperation Forum (i.e., a forum between the CMA, the Information Commissioner's Office and the Office of Communications) to ensure adequate coordination, capability and clarity across the digital landscape.

The DMU will be entrusted with powers to enforce the code of conduct as existing attempts at non-enforceable measures in other countries (i.e., Australia) have shown the difficulties in such a soft approach. As per the CMA's recommendations, this could include powers to suspend, block and reverse decisions of companies with strategic market status, to order conduct to achieve compliance with the code and/or to impose financial penalties for noncompliance.

Potential pro-competitive interventions

The CMA recommended that the DMU have the necessary powers to introduce a range of pro-competitive interventions, such as mandating access to data, enforcing greater interoperability, changing choices and defaults for consumers and imposing separation remedies. While the UK Government agrees in principle with

such a position, it cautions that these types of interventions carry inherent difficulties and more work is required to understand the likely benefits, risks and possible unintended consequences of the range of proposed pro-competitive interventions.

Conclusion

The CMA has welcomed the UK Government's response and will soon be providing advice to government on how this new regime should work. The UK Government intends to make "rapid and tangible progress, and will be legislating as soon as parliamentary time allows."

The UK is not alone in its attempts to regulate digital platforms. On December 9, the European Commission will publish its Digital Markets Act and Digital Services Act, which will introduce an ex ante framework for gatekeeper platforms and new market investigation powers to address structural issues in the digital industry (similar to the CMA's market investigation regime). In Germany, an amendment to the national competition legislation is undergoing parliamentary process. If approved, the reform will grant the German Competition Authority new powers to define a company as an "undertaking with paramount significance for competition across markets" and to impose obligations or prohibit certain behaviours, even in the absence of a competition law infringement.

Clearly, for the foreseeable future, online platforms should watch this space very closely.

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